

### Section 1 Labor Compliance

#### 8-101 General

This section presents the guidelines for administering the labor compliance provisions of the contract. These guidelines apply to all projects, whether state or federally funded. The California Labor Code, the Code of Federal Regulations, Title 29, Part 5 (29 CFR 5), and regulations of the Federal Highway Administration (FHWA) and the United States Department of Labor provide the basis for contract administration protocol and the statutory authority to enforce labor compliance contract provisions.

State and federal laws require contractors working on public works contracts to pay prevailing wages to their employees. Prevailing wages are predetermined hourly rates for each craft that are set by both the California Department of Industrial Relations and the United States Department of Labor. In addition, these laws set guidelines for such things as the following:

- Overtime
- Length or shifts of workday
- Substantiation of wages
- Fringe benefits paid
- Covered work (work done under contract and paid for in whole or in part out of public funds, thus requiring the payment of prevailing wages) and noncovered work

The Federal-aid Highway Acts of 1956 and 1968 provide an active program to ensure that laborers and mechanics employed on federal aid projects are paid at wage rates generally prevailing for the same type of work on similar construction in the immediate locality. The federal wage rate determinations are included in the contract.

The California Labor Code provides that the California Department of Industrial Relations, Division of Labor Statistics and Research (DLS&R) will determine and publish the general prevailing wage rates and those rates are referenced in the contract's special provisions.

The Division of Construction labor compliance unit establishes policy for and administers FHWA-delegated labor compliance responsibilities, as well as the Department of Industrial Relations approved Caltrans' labor compliance program (LCP). The labor compliance and civil rights function is a unit of the Division of Construction.

### Section 1 Labor Compliance

#### 8-101 General

## **8-102 Labor Compliance Responsibilities**

### **8-102 Labor Compliance Responsibilities**

The responsibilities and procedures when administering the contract's labor compliance requirements are described as follows:

#### 8-102A Resident Engineer

##### *8-102A (1) Resident Engineer General Responsibilities*

At the project level, the resident engineer has the responsibility for enforcing the labor requirements that are in the contract special provisions. To fulfill this responsibility, the resident engineer and support staff must have an adequate working knowledge of the contract labor standards.

Early surveillance and detection of labor compliance violations are preferable to conducting belated investigations and implementing formal enforcement actions. Caltrans encourages the resident engineer to bring labor compliance issues to the attention of the contractor and the district labor compliance officer immediately upon detection. Resolve minor issues, such as clerical errors or inadvertent acts, at the project level. Give the contractor ample opportunity to take corrective action so that the dispute can be quickly resolved informally. At the time the labor compliance issue is identified, take a deduction from payment due the contractor. Base any decision to take deductions on the recommendation of the district labor compliance officer. If the contractor provides evidence of full restitution, promptly return the deduction to the contractor. In the event, the contractor does not take corrective action, the resident engineer must notify the district labor compliance officer.

When the contractor knowingly violates labor law or refuses to comply with the contract's labor provisions, the contractor has committed a willful labor compliance violation. Willful violations include situations such as fraud, wage kickback schemes, or falsification of certified payrolls, fringe benefit statements, evidentiary source documents, and daily extra work bills. These violations require that the district labor compliance officer conduct a full investigation and report the findings to the resident engineer and the Division of Construction labor compliance unit.

##### *8-102A (2) Resident Engineer Project Responsibilities*

The resident engineer's specific responsibilities are:

- Ensure that labor compliance, equal employment opportunity (EEO), and disadvantaged business enterprise (DBE) or disabled veterans business enterprise (DVBE) requirements are discussed at the preconstruction conference. Document this discussion, and file the information in the project records.
- Forward all labor compliance, EEO, DBE, and DVBE documents submitted by the prime contractor to the district labor compliance office.
- Refer all employee complaints regarding EEO or wage underpayments to the district labor compliance office.
- Verify that required posters are displayed at the job site.
- Notify the district labor compliance office of all contractor and subcontractor activity during the week.
- After receiving recommendations from the district labor compliance officer, authorize deductions from progress pay estimates for labor compliance, EEO, DBE, and DVBE violations.

- Document labor compliance project activities on the assistant resident engineer's daily report. Minimally, this documentation must include the following information:
  1. Contract number
  2. Name of contractor with name of employee
  3. Hours worked
  4. Classification of employees
  5. Items of work with description and operated equipment with name of operator and name of operator's employer
- Confirm that wage rates and hours listed on extra work bills match prevailing wage rates and hours listed on the contractor's certified payrolls.
- Ensure that Caltrans personnel under resident engineer supervision properly record charges for labor compliance activities. Details are available from the district labor compliance officer and the Caltrans *Coding Manual*.
- Conduct employee interviews, and transmit to the district labor compliance office fully completed interview forms. (For more information about these interviews and forms, see below under the heading "Interviews With Contractor Personnel.") The frequency of these interviews should be at the rate of three employees per contract, per month, including at least one interview from the prime contractor and each subcontractor until such time as the contract is accepted or that all employees on the project have been interviewed. The number of interviews taken must constitute a representative sample of workers employed on the project.

#### 8-102A (3) *Interviews With Contractor Personnel*

The contract labor standards require the contractor to allow authorized Caltrans personnel to interview contractor employees during working hours.

Generally, record employee interviews on Form CEM-2504, "Employee Interview: Labor Compliance / EEO." The employee interview is used to check the validity of information shown on the payrolls and payroll records. The employee is asked questions regarding wage rates, hours of work, and type of work performed. When an interview indicates a reporting deficiency or labor compliance violation, notify the labor compliance officer, who will conduct a full investigation. Send the original form to the district labor compliance officer.

In the case of a small contractor having two or three employees on the project for several months, you won't need to keep taking interviews once all the contractor's staff have been interviewed and the resident engineer is satisfied that the contractor is fully compliant with the labor compliance provisions of the contract. If the resident engineer chooses to suspend further interview activity, document the decision in the project records.

During the interviews, assure the interviewees that their statements, whether oral or written, will be confidential. Do not disclose to the employer the identity of the employee without the employee's consent.

In addition to conducting the usual interviews, interview truck and equipment operators designated as "owner-operator" to determine the correctness of this classification. Factors that establish the validity of the "owner-operator" classification are described below in Section 8-103D (2), "Payrolls and Listings Involving Owner-Operator."

#### 8-102B District Labor Compliance Officer

The district labor compliance officer administers and monitors the labor compliance policy by assisting resident engineers in the enforcement of the labor compliance requirements in the contract special provisions.

##### *8-102B (1) District Labor Compliance Officer General Responsibilities*

Under the general direction of the district construction deputy director, the district labor compliance officer has immediate charge of the district labor compliance office and must directly supervise and train those assigned to assist in administering and monitoring labor compliance and other related contractual obligations. Further, the district labor compliance officer must ensure that employees use proper charging practices when performing labor compliance activities.

The administration and monitoring of labor compliance provisions extends to all types of state and federal highway construction projects including the following:

- Minor contracts
- Service contracts
- Maintenance contracts
- Right-of-way demolition contracts
- Local assistance projects

##### *8-102B (2) Labor Compliance Officer Project Responsibilities*

The district labor compliance officer's specific responsibilities, in assisting the resident engineer to administer contracts, are:

- Attend or delegate attendance at the preconstruction conference. Discuss the labor compliance, DBE or DVBE, EEO and subcontracting provisions of the contract.
- Provide appropriate labor compliance training for district project personnel.
- Review employee interviews and cross-check wage rates and classifications against certified payrolls. Forward one copy of the employee interview to the Division of Construction's labor compliance unit.
- For investigation and follow-up, refer EEO complaints to the contract compliance unit of Civil Rights. For detailed information on the EEO complaint process, refer to Section 8-2, "Equal Employment Opportunity," of the *Construction Manual* (manual).
- To ensure certified payrolls are accurate and complete, use random sampling to crosscheck the payrolls against assistant resident engineers' diaries. Crosscheck classifications, hours, names, and state and federal prevailing wage rates. To supplement payrolls, use apprenticeship agreements and fringe benefit statements.
- When necessary, recommend to the resident engineer that appropriate deductions be withheld from progress payments made to the contractor.
- To determine if the labor compliance provisions of the contract have been breached and to verify the accuracy of payrolls, review source documents at the contractors' office and collect evidence.

- During the life of a contract, review contractors and subcontractors with a history of poor labor standards practices. The Division of Construction's labor compliance unit maintains a master file of contractors' payroll source documents reviews. The objective of the master file is to avoid unnecessary or repetitious source document reviews. Therefore, when a district anticipates making a review, first call the Division of Construction's labor compliance unit to determine if a similar review occurred recently on the same contractor. When a review has been completed, fill out Form CEM-2508, "Contractor's Payroll Source Document Review," and Form CEM-2509, "Checklist - Source Document Review." Forward these forms to the Division of Construction's labor compliance unit.
- When wage underpayments have occurred, prepare labor compliance violation cases and submit them to the Construction Program labor compliance unit for approval. Upon review and approval, the Construction Program labor compliance unit will submit the case to the California Department of Industrial Relations for state labor code violations. A copy must be retained in the project records when federal labor laws have been violated.
- If the contractor appeals the findings and final recommendations of a labor compliance violation case, represent the district during the administrative hearing process or during court proceedings.

#### 8-102C Contractor

Labor compliance regulations are included in the contract special provisions. The prime contractor is responsible for labor compliance for its own company as well as all subcontractors. In this section, the term "subcontractor" applies to all subcontractors (approved or not) employed by the prime contractor and all lower-tier subcontractors who perform "covered" employment as described under the heading "Covered and Noncovered Employment" later in this section. On federal contracts, the prime contractor must insert the labor regulations in all subcontracts and in turn subcontractors must include these regulations in all lower-tier subcontracts. Labor provisions of the contract require the same standard of performance from prime contractors and subcontractors as expected of all other requirements of the contract. For noncompliance with contract labor provisions, Caltrans has statutory authority to withhold payment to the prime contractor for back wages and penalties.

### **8-103 Certified Payroll Requirements**

A payroll is a record of all payments a contractor made to employees working on the project. A certified payroll is one that contains the written declaration required in Section 7-1.01(3), "Payroll Records," of the *Standard Specifications*.

Subcontractors must submit to the prime contractor all certified payrolls, owner-operator listings, and statements of compliance. In turn, the prime contractor must submit these documents to either the resident engineer or the district labor compliance office by the 15<sup>th</sup> of the following month for the previous month. The payrolls can be submitted on the state-furnished Form CEM-2502, "Contractor/Subcontractor Payroll," or any alternate form that includes a statement of compliance with wording identical to that on Form CEM-2503, "Statement of Compliance." For every person employed at the job site that performed a part of the work, the following information must be contained on the certified payroll form:

- The employee's full name, address, and social security number. The employee's address and social security number need only appear on the first payroll on

### **8-103 Certified Payroll Requirements**

which the employee's name appears. Company owners, superintendents, and nonworking foremen need only be listed by name, title, and hours worked. The employee's classification, including craft, group, and level of expertise. The labor classification used must be descriptive of the work actually performed and match the nomenclature used in the prevailing wage decisions.

- The employee's hourly wage rate. If the employee worked overtime hours, then report the applicable overtime hourly wage rate.
- The daily and weekly hours worked in each classification, including actual overtime hours worked. Add any premium for overtime hours worked to the rate of pay, not the reported number of hours worked.
- The gross wages, itemized deductions, withholdings, and net wages paid.

#### 8-103A Review of Payrolls

Payrolls must conform to federal and state labor laws. The following are guidelines for checking certified payrolls. In most cases the labor compliance officer will conduct the payroll review; however in some districts, payroll documents are checked by the resident engineer.

##### *8-103A (1) Fringe Benefit Statement*

Contractors must use Form CEM-2501, "Fringe Benefit Statement," or equivalent to indicate payment of fringe benefits as a supplement to the certified payroll. A fringe benefit statement is a breakdown of benefits in addition to hourly wage rates that the contractor pays on behalf of the employee. Typical fringe benefits include vacation, health benefits, pension plans and training funds listed in the prevailing wage rates. The fringe benefit statement should also indicate to whom the fringe benefits have been paid, such as a union trust fund or as a cash payment made directly to the employee.

##### *8-103A (2) Travel and Subsistence*

When a project is located in a geographic area designated as a subsistence area, contractors are required to make travel and subsistence payments to their employees in accordance with the current collective bargaining agreements on file with the Department of Industrial Relations. Subsistence is to be paid as a lump sum daily payment or as an increased hourly wage rate, depending on the craft, classification, and bargaining agreement for each craft.

##### *8-103A (3) Workday*

Each workday is considered to begin at 12:01 am and to extend a full 24-hour period, ending at 12:00 pm. For those contractors working at night, for instance a Friday evening and Saturday morning, the payrolls should reflect regular pay rates of hours worked on Friday, and applicable premium rates of pay for all work beginning at 12:01 am on Saturday morning.

##### *8-103A (4) Assistant Resident Engineers' Daily Reports*

Using assistant resident engineers' daily reports, verify that the payroll reflects the labor used and the hours worked for each day of work at the job site, including weekends and holidays. The method of reporting hours is accurate, that the actual number of hours worked is clear, and the rate of pay can be readily determined.

### 8-103A (5) *Wage Rates*

The prevailing hourly wage rate is composed of the basic hourly wage rate plus fringe benefits. When state and federal wage rates differ, the contractor is required to pay the higher of the two. On federally funded projects, if payment is made at an hourly rate in excess of the prevailing rate, this hourly rate, less fringe benefit payments, is the basic hourly rate for computing overtime compensation.

### 8-103A (6) *Overtime*

After an employee works 8 hours in a calendar day or 40 hours in a calendar week, the employee is entitled to be paid at the proper prevailing overtime rate, but not less than one and one-half times the basic wage rate plus fringe benefits. The federal wage decisions do not differentiate between weekday rates of pay and Saturday or Sunday rates of pay; however, the state prevailing wage rates do list premium rates of pay for work performed on Saturdays and Sundays.

### 8-103A (7) *Apprentices*

Apprentice classifications are correctly identified and that the type of work and ratio of apprentices to journeyman meet the requirements of the apprenticeship agreement on file with the Division of Apprenticeship Standards. A disproportionate employment of apprentices to journeymen could indicate that some of the apprentices are working outside the limits of their classification. When this occurs, excess apprentices must be paid at the journeyman rate.

### 8-103A (8) *Deductions*

Payroll deductions should have a complete, clear, and concise breakdown. The contractor may not combine payroll deductions on the payroll form without proper identification unless an attachment specifies supplemental data with the purpose and amount of each deduction.

All deductions must comply with the Department of Labor, Code of Federal Regulations, Title 29, Part 3, "Copeland Anti-Kickback Act." Additional regulatory language can be found in Chapter 1, "Payment of Wages," Sections 213, "Limitations Upon Effect and Applicability of Section 212," and 224, "Withholding or Diverting Portion of Wages Under Law or Written Authorization," of the California Labor Code.

### 8-103B Wage Calculation Methods

Payrolls are acceptable if they are prepared in accordance with either of the methods shown below. These examples illustrate a situation where an employee worked 10 hours on a given day, overtime premium of one and a halftimes the basic hourly rate of \$14.00 per hour, \$2.00 per hour subsistence, and with fringe benefits amounting to \$6.00 per hour.

Method One: Basic reported hours of work

8 hours @ \$22.00/hour = \$176.00

2 hours @ \$29.00/hour = \$ 58.00

Total Pay for the day = \$234.00

Method Two: Adjusted rate of pay

10 hours @ \$22.00/hour = \$220.00

2 hours @ \$ 7.00/hour = \$ 14.00

Total Pay for the day = \$234.00



### 8-103C Payroll Deductions

This section covers payroll violations, discrepancies, delinquencies or inadequacies. The contractor must submit payrolls and accompanying statements of compliance in accordance with the special provisions and Section 7-1.01A(3), "Payroll Records," of the *Standard Specifications*.

#### *8-103C (1) Inadequate payrolls*

When discrepancies are found during payroll review, the following procedures must be taken:

- The district labor compliance officer must request that the contractor submit a supplemental payroll correcting the discrepancy. Under no circumstances should you return incorrect or incomplete certified payrolls to the contractor for revision. However, the contractor may make corrections to certified payrolls if those corrections are written in ink and the contractor initials each correction in the presence of Caltrans personnel.
- The contractor must then make the corresponding correction to its payroll records and provide proof of wage restitution for all effected employees. This can be in the form of canceled checks, copied both front and back.
- To ensure that payroll inadequacies or discrepancies are corrected, use a tabulation or summary sheet to record discrepancies and to note when and how each error was corrected. This record need not be elaborate. In most cases, a simple tabulation showing the name of the person or firm, the payroll period or week ending date, the discrepancy, and the method of correction is sufficient. The labor compliance officer must fill out Form CEM-2507, "Labor Violation: Case Summary" and submit it, along with a copy of the tabulation, to the Division of Construction labor compliance unit.

#### *8-103C (2) Delinquent payrolls*

If payrolls and statements of compliance have not been received for all weeks that the contractor or subcontractors worked on the project, consider the payrolls delinquent. The labor compliance officer must notify the resident engineer and the contractor which certified payroll documents are missing.

The resident engineer must deduct monies due to the contractor on the monthly progress pay estimate in accordance with Section 7-1.01A(3). Make deductions separately for each estimate period in which a new delinquency appears. When all delinquencies for a period have been corrected, release the deduction covering that period on the next progress pay estimate.

#### *8-103C (3) Missing payroll Deductions*

##### **Example 8-1.1 Estimate Number One**

The following examples illustrate the process for taking and releasing deductions on the monthly progress pay estimates.

Progress pay estimate number one has a value of \$9,500.

Value of the deduction is 10 percent of \$9,500 or \$950.

Therefore, the resident engineer must deduct the minimum amount of \$1,000.



#### Example 8-1.2      Estimate Number Two

Estimate number two has a value of \$49,000.

One or more pay documents are still delinquent under a previous month's deduction plus one or more new delinquencies for this period.

Value of the deduction is 10 percent of \$49,000 or \$4,900. Last month's deduction was a total of \$1,000. Therefore, the resident engineer should have a total deduction of \$5,900 from the current progress payments due to the contractor.

#### Example 8-1.3      Estimate Number Three

The delinquencies are all cleared up for the previous month but new delinquencies have originated during this period. Estimate number three has a value of \$55,000.

Value of the deduction is 10 percent of \$55,000 that is equal to \$5,500. Total deductions for this pay period are \$5,500.

The resident engineer should return \$5,900 - \$5,500, or \$400 to the contractor for the current progress pay estimate.

#### Example 8-1.4      Estimate Number Four

The contractor has not corrected the problems with the payrolls in question during progress pay estimate number three. No new delinquencies have occurred. No additional deduction is warranted. Make no change to the amount of money deducted from the contractor for this period, and continue to hold \$5,500.

#### Example 8-1.5      Estimate Number Five

Progress pay estimate number Five is for a total of \$120,000. The contractor has a carry over deduction from progress pay estimate four of \$5,500.

There are new payroll delinquencies for this pay period. The value of the current deduction is 10 percent of \$120,000 or \$12,000. However the maximum allowable deduction for missing labor compliance documents is \$10,000 per pay estimate.

The total value for labor compliance violations is  $\$10,000 + \$5,500 = \$15,500$ .

#### 8-103C (4)      *Refusal to provide payrolls*

If the contractor refuses to submit certified payrolls, in accordance with Section 7-1.01A(3), "Payroll Records," of the *Standard Specifications* and the requirements of the special provisions, notify the contractor by certified mail that payrolls have not been received. The letter should advise the contractor that they are in violation of the contract, and that if payrolls are not submitted within 10 days of receipt of this letter, penalties will be assessed in accordance with Section 1776(g) of the California Labor Code in the amount to \$25.00 per worker for each calendar day the payroll has not been submitted. If the payroll has not been turned in after 30 days of the date

of the letter, the resident engineer should request the district labor compliance officer's assistance to subpoena these documents. Process an administrative deduction in the full amount of labor compliance penalties on a monthly basis. These deductions are penalties and are not refundable to the contractor, regardless of the method used to obtain the payrolls. Careful consideration should be given before assessing these permanent deductions.

#### *8-103C (5) Correlation of Payrolls and Extra Work Bills*

Compare the labor charged by the contractor for extra work with the corresponding payrolls. The certified payrolls and fringe benefit statements serve as source documents for approval of every extra work bill. The extra work bill must show the identical labor classifications, hours worked, and wage rates, including fringe benefits, that are shown on the certified payroll documents. The labor compliance office must notify the resident engineer immediately of any discrepancy. Do not approve payment of the extra work bill until the discrepancy is corrected or it is determined by the labor compliance officer to be a labor compliance violation; not an extra work overcharge.

#### *8-103C (6) Withholding Payment for Violations*

For any labor compliance violation that results in penalties assessed against the contractor, use the following procedure:

The district labor compliance officer must conduct a full investigation of the facts and circumstances of the case. The facts of the case will determine whether the wage violation was inadvertent, a mistake, or a willful violation. Based on the intent of the violation, recommend the penalty amount to be assessed against the contractor in accordance with the provisions of the contract and the California Labor Code. The Division of Construction labor compliance unit will review the case. In all situations other than inadvertence or mistake, the Division of Accounting Services Disbursing Office will withhold the full amount equaling the state and federal penalties and the amount of wage underpayments.

When the California Department of Industrial Relations, Division of Labor Standards Enforcement receives a complaint, that complaint will be forwarded to the district labor compliance officer for investigation of wage underpayment. If a wage underpayment is found, the district labor compliance officer must write up a formal labor violation case, make appropriate including recommendations for penalties, and submit it to the Division of Construction labor compliance unit.

#### *8-103C (7) Documents Outstanding at the Time of Contract Acceptance*

When there are outstanding documents, such as payrolls, take an "Other Outstanding Documents" (OOD) deduction from payment to the contractor on the after acceptance estimate as covered in Section 3-9, "Measurement and Payment," of this manual.

#### 8-103D Review of Owner-Operator Listing

Contractors are required to list all owner-operators used on covered work and certify owner-operator status by providing at least the following information:

- Operator name as shown on all payrolls.
- Business address of the owner-operator.
- The owner-operator's social security number.

- The tractor license number. If the equipment is used off highway, the contractor must provide a complete description of the equipment and include the dates that equipment was operated on the project.
- Operator labor classification
- Hours worked by the owner-operator as reported on a daily basis.
- Hourly rental rate paid for the owner-operated equipment
- Gross estimate or actual payments earned.

This information must be provided by the contractor on Form CEM-2505, "Owner-Operator Listing Statement of Compliance," supplied by Caltrans. Certification will be accepted only from the contractor employing the owner-operator. It is not appropriate to accept certified payrolls or an owner operator listing directly from the owner-operator unless that owner operator is a licensed contractor and is also an approved subcontractor or recognized lower tier subcontractor.

#### *8-103D (1) Calculating Equipment Owner-Operator Payment Breakdown*

From the information shown in the payroll, determine the hourly wage rate due by deducting the prevailing equipment rental rate for the area from the gross hourly rate shown on the owner-operator listing. The contract rental rate (without markup) may be used as a guide. Since this may not be the local prevailing rate, it may be necessary to canvass local rental agencies or other sources to determine the actual prevailing equipment rental rate.

Compare the hourly wage rate so determined to the applicable basic wage plus fringe benefits to determine compliance.

#### *8-103D (2) Payrolls and Listings Involving Owner-Operator*

Use the following requirements to differentiate an owner-operator from a contractor's employee:

- If review of payroll records show that deductions for social security taxes or state unemployment insurance taxes are withheld for the owner-operator, it is an indication that the operator is an employee rather than an independent contractor.
- An employee interview can be taken from the owner-operator on Form CEM-2504, "Employee Interview: Labor Compliance / EEO." If it is apparent that an owner-operator is in fact an employee, then all of the information required by interview Form CEM-2504, including the equal employment opportunity portion, is to be filled out completely and brought to the attention of the district labor compliance officer.

#### 8-103D (2a) For truck owner-operators:

- The operator should be the registered owner of the vehicle. The name of the driver should match the name of the registered owner on the Department of Motor Vehicles' registration.
- If the legal owner is a firm or corporation, and the firm or corporate name is shown on the vehicle registration slip, request that the driver furnish evidence that they are leasing or purchasing the vehicle. It is common for the name of the finance or leasing company to be listed on the registration. If the owner operator is leasing or financing the vehicle, then the operator should be able

to furnish such evidence. If the owner operator is unable to substantiate purchase or lease of the equipment, the resident engineer should disallow use of the owner-operator classification for this truck and contact the labor compliance officer.

- Insurance for the vehicle should be carried in the driver's name. Further checking is required if the name on the policy does not match the name of the driver.
- The California identification (CA) number issued by the California Highway Patrol (CHP) should be in the driver's name. If the name on the CA number doesn't match the name of the driver, further investigation is warranted.

If the ownership of a vehicle cannot be determined from the insurance, registration, or title, forward the license number or a CA number to the district labor compliance officer. The district labor compliance officer will send information to the Division of Construction labor compliance unit to be run through Department of Motor Vehicles' or CHP Motor Carrier Permit Division record check.

8-103D (2b) For equipment other than trucks:

If the owner operator is leasing or financing the equipment, then the operator should be able to furnish such evidence. If the owner operator is unable to substantiate that they are purchasing or leasing the equipment, the resident engineer should disallow use of the owner-operator classification for this piece of equipment. The contractor must establish proof of ownership in cases where there is doubt as to the validity of the owner-operator designation. If difficulty is encountered in determining truck ownership, all pertinent data should be submitted to the Division of Construction labor compliance unit.

**8-104  
Covered and  
Non-Covered  
Employment**

**8-104 Covered and Non-Covered Employment**

Caltrans is responsible for enforcement of both federal and state labor compliance requirements for all contracts it advertises and awards. The California Labor Code requires that all public works projects are subject to the payment of prevailing wages for the immediate geographic area in and adjacent to the project.

Every laborer or mechanic employed at the job site who performs a part of the contract work is subject to the labor provisions of the contract. The laborer or mechanic may be either an employee of the prime contractor, an employee of an approved or listed subcontractor, or some other person or firm who furnishes on-site labor, including specialists.

The terms "jobsite" or "site of the work" as applied to labor compliance are not limited to the actual geographic location or limits of the project. In addition, these terms include any location or facility established for the sole or primary purpose of contributing to the specific project. Typical examples of these types of locations or facilities include material sites, processing plants, fabrication yards, garages, or staging sites set up for the exclusive or nearly exclusive furtherance of work required by the project. Essential criteria for job site or off site work is whether these facilities have been operating on a commercial basis for a period of at least two months prior to the award of the contract or whether that site performs a commercially useful function exclusively for this project.

Employees working at a job site or site of work are covered by the prevailing wage law and the provisions of the specific contract under investigation. In those cases when the distinction between covered and non-covered employment is not clear, the matter should be referred to the district labor compliance officer for evaluation.



#### 8-104A Materials Sites

For labor compliance purposes, materials sites used exclusively for the project are considered as being on site. Employees at these sites must be paid prevailing wages. Factors that determine coverage of material sites include:

- The commercial or noncommercial nature of the operation
- The amount of contractor or supplier control of the site
- The exclusiveness of the material site to the project
- The location of the materials site relative to the project limits
- Which party has control of the materials loading operation

Typical situations for coverage determinations favoring the payment of prevailing wages include:

- A commercial source outside the project limits where the prime contractor loads a trucking company's trucks.
- An imported borrow pit, located outside the project limits used exclusively by the contractor for a specific project.
- A pit established exclusively for a project to supply materials.

In all three of the above cases the work is covered and the contractor is required to pay prevailing wages to employees.

#### 8-104B Material Plants

Roadside production of materials produced by other than the contractor's forces is considered as "subcontracted" with respect to the contract labor standards.

Materials, including aggregates, produced with any kind of portable, semi-portable, temporary crushing, screening, proportioning, batching, or mixing plant are considered to have originated at a materials plant.

When a materials plant has been established or reopened exclusively or nearly exclusively for the purpose of supplying materials to a specific contractor for specific projects, and when these plants are not generally operated commercially, they are considered to be a site of the work and therefore covered for the payment of prevailing wages. Work involved in the establishment, reopening, and general operation of such plants will also likely be covered by the contract labor standards. Use the following guidelines to determine if a plant is commercial and therefore not covered by contract labor provisions:

- The operator has obtained a permit to operate as a commercial plant
- A business license has been obtained for the operation of the plant
- A public weigh master operates scales at the materials plant
- The contractor provides proof of sales to other agencies or individuals.

The prime contractor must demonstrate that the primary purpose of this materials plant is for general commercial operations. The contractor must provide proof that more than token sales have originated at this material plant.

#### 8-104C Equipment Furnished by Equipment Rental Firms

Equipment is often rented or leased by contractors from established commercial equipment rental firms. The prevailing wage rate provisions of the contract do not cover drop off, pick up, and incidental repair of this equipment. When rented equipment used in the work, including extra work, is operated and maintained by employees of the equipment rental firm, the equipment rental firm is considered to be a “subcontractor” with respect to labor compliance. The employees of the rental firm are, in this situation, covered by the labor compliance requirements of the contract.

#### 8-104D Equipment Furnished by Owner-Operators

Owner operators of general construction equipment such as graders, cranes, or excavators are considered covered by the Davis-Bacon Act. Since they are covered employees, the contractor must list them on Form CEM-2505, “Owner-Operator Listing Statement of Compliance.” Workers must be paid at least the minimum prevailing wage rate in effect for the specific contract plus the appropriate equipment rental rate.

For labor compliance purposes, material transporters and independent truckers hauling materials directly from commercial sources are exempted from wage reporting all together. Claimed exceptions are subject to verification by the resident engineer.

Owner-operators of haul trucks, water trucks, or bitumen trucks are considered independent contractors not directly associated with the project. Therefore, these employees are not subject to the prevailing wage rate requirements of the contract. To verify owner-operator status, either the truck owner-operator is required to report hours worked on a certified payroll or the contractor must list the owner-operator on a certified owner-operator listing.

#### 8-104E Repair of Equipment

General repair of equipment used on the job site or located at the site of work, including installing, overhauling, assembling, repairing, reconditioning, or other work on machinery, equipment, or tools used in or upon the work is a part of the work to be performed under the contract. Established, independent commercial repair shops that have operated for a period of at least two months prior to the award of the contract are not covered. Mechanics and other employees working on such machinery, equipment, or tools are covered by the contract labor provisions. Such employees must be listed on the contractor’s or subcontractor’s certified payroll records.

#### 8-104F Work Performed by Vendors, Suppliers, and Fabricators

Suppliers and fabricators of materials who are not subcontractors and who do not work at the job site other than delivering materials are not subject to the contract labor requirements. However, a supplier or fabricator is a subcontractor subject to the labor provisions for that portion of the work performed at the jobsite. For instance:

- Shop work during fabrication of structural steel is not subject to the contract labor requirements. The contract labor provisions cover any structural steel work performed subsequent to delivery of material to the jobsite even though shop personnel may perform it. This includes repair of damaged or defective work, as well as normal installation or erection.



- Oil spreading by employees of asphalt suppliers is subject in certain conditions:
  1. Only the time spent on site spreading the material is covered work. Standby time is not.
  2. Coverage will apply only when the employee, during one workweek, has actually spent at least 20 percent of the total time worked spreading material on the specific project. Once a particular employee qualifies for coverage, all the actual spreading time that week is retroactively covered. Staggering employees to avoid coverage is permissible.
- Treat spreading of pavement reinforcing fabric in the same way that oil spreading work is treated.

At the job site, installation of any manufactured product, such as mechanical and electrical equipment, bridge deck expansion and bearing assemblies, sign frames, precast or precast-prestressed concrete beams, and all similar fabricated items is covered work and subject to the contract labor provisions.

#### 8-104G Work Performed by Specialists

An independent firm that furnishes a special service or performs work of a specialized nature is considered to be a “subcontractor” with respect to the labor provisions.

Work performed by specialty firms is subject to all contract labor requirements, regardless of the nature of the work, service, or method of payment.

#### 8-104H Engineering Consultants, Materials Testers, and Land Surveyors

All firms that furnish engineering services such as construction inspection, materials testing, and land surveying, at the job site regardless of whether that firm is hired by the contractor or Caltrans, is subject to California labor code prevailing wage requirements. The payment of prevailing wage rates is mandatory.

### **8-105 Classification of Labor and Wage Rate Determinations**

Labor standards require the proper classification and payment of workers for the work they actually perform. To meet these standards, the contractor and persons or firms performing the work on the project must:

- Use only the classification and nomenclature listed in the wage determination decision or prevailing wage rate determination applicable to the contract.
- Use classifications that describe the work being performed. For example, if carpenters are used to place reinforcing steel, they should be shown as “ironworkers” and paid accordingly.
- Maintain an accurate record of the time spent in each work classification, and show this time by means of separate entries in the payroll records and on the certified payroll.

A single worker may perform many different tasks covered by more than one craft or classification during the course of a single day. In this situation, the contractor may break up the work into the different classification and pay accordingly or it may pay the worker the highest applicable wage rate for the entire day. If the highest wage rate is paid for the entire day, separate entries in the payroll records are not required.

Since most construction work is performed by recognized craft classifications, prevailing practice in the industry and union rules will usually determine the proper classification. Workers must be classified and paid according to the work they actually perform, regardless of union affiliation, other titles, or designations.

### **8-105**

#### **Classification of Labor and Wage Rate Determinations**



Occasionally, the wage rate may not be provided in the federal wage determinations for a particular labor classification. When this occurs, the workers should be reclassified, if possible, to a comparable classification. If it is not possible to reclassify the work, contact the district labor compliance officer and request that a wage classification be determined. A wage survey, collective bargaining agreements, local prevailing practice and the contractor's previous experience with similar work will be considered in reaching this determination.

To request wage rate determinations on federal-aid contracts, use United States Department of Labor Form SF-308, "Request For Wage Determination and Response to Request." To request federal wage rates, consult the Division of Construction labor compliance unit.

In no case may a construction contract be considered effectively amended until a response has been received from the Department of Labor indicating approval of the proposed classification or reclassification requests.

#### 8-105A Prevailing Wage Requirements

In most cases, the wage rates as determined by the California Department of Industrial Relations and the United States Department of Labor will be the same for any given labor classification. If there is a difference between Department of Labor wage rates and Department of Industrial Relations wage rates for similar classifications of labor, the contractor must pay the higher wage rate.

When there is an error in the published rate, the district should notify the Division of Construction labor compliance unit. They will contact the Department of Industrial Relations or the Department of Labor, depending on which agency's rate is in error. Corrections will be made in accordance with Section 16206, "Corrections," of the California Code of Regulation.

#### 8-105B Special Wage Determinations

The state general prevailing wage rates contain most crafts and classifications of workers required on Caltrans projects. Occasionally, however, a unique labor classification may be anticipated for future state-funded major construction projects or for minor or miscellaneous service contracts, but are not listed in the general prevailing wage rates. In this situation, the district labor compliance officer must obtain a special wage determination from the Department of Industrial Relations.

To initiate the request, the district labor compliance officer must prepare a memorandum to the Division of Construction labor compliance unit, describing the following:

- Job duties and the nature of the work
- The locality (county) where the work is to be performed
- The anticipated advertisement and award dates
- A list of contractors or employers, including complete addresses and telephone numbers, who perform work of a similar nature within the same geographical area
- The most recent determination number of any prior requests

The Division of Construction labor compliance unit will forward the request to the Department of Industrial Relations, Division of Labor Statistics and Research (DLS&R). DLS&R will prepare a special wage determination and send it to the

Division of Construction labor compliance unit. The Division of Construction labor compliance unit will send the special wage determination by cover memo to all district labor compliance officers for appropriate handling or future reference.

In case of a jurisdictional dispute, such as a dispute between cement masons and operating engineers, a non-signatory contractor may pay either wage rate, as long as it is recognized by the Department of Industrial Relations.

#### 8-105C Supervisory and Managerial Personnel

As a general rule, when administering the prevailing wage requirements, those employees whose work is supervisory or non-manual in nature are not considered as laborers or mechanics. However, just because an employee is paid a salary or is called a foreman does not mean that the person is not a laborer or mechanic.

If a supervisor, regularly and for a substantial period of time, performs journeyman work, then that supervisor is subject to the prevailing wage requirements of the contract.

If the time that the supervisor performs the work of a journeyman is negligible and does not establish a definite pattern, that supervisor's entire employment should be considered supervisory and not subject to prevailing wage requirements.

#### 8-105D Corporate Employees as Officers and Directors

A corporation is a single legal entity represented by the corporate officers acting pursuant to the corporate bylaws and applicable state law.

Any corporate officer that works on a project as a laborer or mechanic, regardless of an employment relationship to the corporation, must be paid not less than the prevailing hourly wage rates established for the type of work performed.

The only exception is when corporate officers act in a supervisory capacity and do not perform the function of a workman or laborer.

#### 8-105E Employment of Apprentices

The California Labor Code limits payment of apprentice wage rates to persons registered as apprentices in an approved apprenticeship training program with the Department of Industrial Relations, Division of Apprenticeship Standards (DAS).

An apprentice who is not so registered is not "properly indentured" within the meaning of the term as it is used in the State Labor Code and the *Standard Specifications*. Under the provisions of the contract, a non-indentured apprentice is not considered to be an apprentice and must be paid the journeyman wage rate for their classification.

For each project, the contractor is required to furnish evidence of its apprentices' registration. This evidence must be on a Division of Apprenticeship Standards Form DAS-1, "Apprenticeship Agreement," or a letter giving notice of registration from the Division of Apprenticeship Standards (DAS). Either Form DAS-1 or a letter from the Division of Apprenticeship Standards is acceptable evidence of apprentice registration.

If an apprentice is scheduled to work on the project before the contractor receives evidence of registration, the district labor compliance officer must telephone the nearest Division of Apprenticeship Standards (DAS) office and confirm proper registration.

This procedure will expedite the verification of apprentices but does not preclude the obligation of the contractor to supply written evidence of the apprentice's registration and to satisfy the state requirements and Section 1777.5 of the California Labor Code.

In addition to evidence of registration in its program, the contractor is required to use the appropriate apprentice-journeyman ratios and wage rate percentages, as addressed in state prevailing wage determinations and contractor's union agreements.

Section 1777.5 of the State Labor Code requires the contractor to contribute the training fund portion of the fringe benefit to the appropriate apprentice trust fund or to the Division of Apprenticeship Standards (DAS), California Apprenticeship Council.

#### 8-105F Partial Coverage

Contractors or subcontractors who are engaged in more than one Caltrans construction project at a time may use the same employees on two or more projects during a given work-week. Separate certified payrolls must be provided for individual contracts.

### **Labor Compliance Case Write Ups**

#### **8-106 Labor Compliance Case Write Ups**

After investigating the facts and determining that an apparent labor compliance violation has occurred, the district labor compliance officer will determine the amount of penalty assessment and wage restitution due from the contractor. The district labor compliance officer must document findings on forms CEM-2506, "Labor Compliance - Wage Violation," and CEM-2507, "Labor Violation: Case Summary." Use Form CEM-2506 to record applicable data for each worker who was underpaid on a Caltrans contract. Use Form CEM-2507 to summarize the data on the CEM-2506 and to provide a chronological record of the case. State labor compliance violation cases must be documented to include:

- A description of the facts and evidence collected to build the labor compliance violation case
- A spreadsheet showing a summary of wages and penalties due each employee
- Evidence provided by and statements made by the contractor
- An analysis of the facts
- A Case History
- Recommendations to the Department of Industrial Relations.

Forms CEM-2506 and CEM-2507 are sufficient documentation for assessing penalties and withholding back wages due employees for federal wage case violations. Attach Forms CEM-2506, CEM-2507, CEM-2508, "Contractor's Payroll Source Document Review," CEM-2509, "Checklist - Source Document Review," a case history, and applicable correspondence with the contractor to a cover letter when forwarding cases to the Division of Construction labor compliance unit with the district's recommendations.

#### *8-106A (1) Withhold of Funds Hearing*

Legal authority to withhold funds from the contractor for labor compliance violations is provided by Title 8, "Industrial Relations," California Code of Regulations, Section 16410, "Definitions," through 16414, "Hearing."

Caltrans must provide written notice to the contractor and to any affected subcontractor of the withholding, retention, or forfeiture. The notice must contain the following information:

- The amount to be withheld, retained, or forfeited.
- A short statement of the factual basis as to why the funds are to be withheld, retained, or forfeited. Include the computation of any wages found to be due and the computation of any penalties assessed under the California Labor Code Section 1775.
- Notice of the right to request a hearing and the manner and time within which a hearing must be requested.
- Notice that penalties can be recovered by the prime contractor from an offending subcontractor.
- The notice must be sent by certified mail to the last known address of the contractor and the offending subcontractor.
- Once the notice has been provided to the contractor and offending subcontractor, Caltrans will withhold enough money to cover wage restitution and penalties as stated in the notice.

A contractor or offending subcontractor may request a hearing by sending a letter postmarked within 30 days of the date of the mailing of the notice described above to the awarding body and to the Department of Industrial Relations, Division of Labor Standards Enforcement.

The contractor must supply to the Division of Labor Standards Enforcement a statement of all factual and legal grounds upon which the contested withhold is based and must identify the specific elements and issues being contested.

Upon receipt of a timely hearing request, the Division of Labor Standards Enforcement must, within 30 days, hold a hearing to determine whether reasonable cause exists to withhold and retain funds identified in the written notice.

The hearing may be continued at the request of the party seeking the hearing upon a showing of good cause. Neither the Department of Industrial Relations nor Caltrans can request a continuance.

## **8-107 Debarment of Contractors**

### **8-107A State**

The Department of Industrial Relations, Division of Labor Standards Enforcement, (DLSE) has the authority to debar contractors from bidding on public works projects. Caltrans, through its approved labor compliance program, does not directly investigate the contractor for debarment; however Caltrans can prepare a written complaint requesting the debarment of a contractor. This complaint is forwarded to the Department of Industrial Relations for a final debarment determination. Anyone may file a debarment complaint, including an individual party.

A debarment order may be taken against a contractor or any subcontractor. The intent of the law is to debar and prevent contractors who have committed any violation with the intent to defraud or have committed more than one willful violation within a three-year period from bidding on public works projects.

## **8-107**

### **Debarment of Contractors**

The requirements and procedures for debarment can be found in Section 1777.1, “Penalties for Willful Violations of Chapter; Notice; Hearing,” of the California Labor Code. Additional legal authority to debar contractors can be found in Title 8, “Industrial Relations,” of the California Code of Regulations.

#### 8-107B Process for Filing a Debarment Complaint

The district labor compliance officer may request the Division of Construction labor compliance unit to file a complaint for Caltrans with the Department of Industrial Relations Division of Labor Standards Enforcement. The following information should be provided:

- An individual case summary of all district labor compliance enforcement actions.
- A summary of prevailing wage cases filed against the contractor.
- Dollar amount of all withholds taken and penalties assessed.
- Status of whether the cases were approved by the labor commissioners office.

Each district labor compliance officer will maintain a “Caltrans labor compliance debarment log” showing the dates of complaint preparation, when forwarded to the Division of Construction labor compliance unit, and when sent to the Department of Industrial Relations for a final decision.

The investigation and final determination for debarment rests solely with the Department of Industrial Relations, legal office and the Division of Labor Standards Enforcement. Final determinations will be forwarded to complainant and the awarding body.

#### 8-107C Federal Suspension and Debarment

Suspension and debarment apply to all federal-aid highway construction projects and are discretionary administrative actions taken to protect the federal government by excluding persons from participation in the federal assistance programs.

A suspension and debarment action ensures that the federal government does not conduct business with a person who has an unsatisfactory record of integrity and business ethics. The suspension and debarment actions are administered government wide; consequently, a person excluded by one federal agency is excluded from doing business with any federal agency.

### **8-108 Summary of Labor Compliance Law, Act, and Statute**

#### **8-108 Summary of Labor Compliance Law, Act, and Statute**

The following section provides an overview and content summary of labor compliance law, acts, and statutes.

##### 8-108A Federal Law

###### *8-108A (1) Copeland Act*

- Full wages earned must be paid.
- Deductions from wages must be authorized.
- Proper payroll records must be kept for a period of three years after contract completion.
- Statements of compliance must be submitted weekly by the prime contractor and all persons or firms performing work on the contract.

*8-108A (2) Prevailing Wage Provisions of Davis-Bacon Act.*

- Wages paid to laborers and mechanics must not be less than the predetermined hourly rates (including fringe benefits) shown in the appropriate wage schedule.
- Laborers and mechanics must be properly classified and paid according to the work actually performed.
- Laborers and mechanics must be paid at least once a week.
- The prevailing wage schedule, including fringe benefits and supplements (which can be the one printed in the contract proposal), and the minimum wage poster must be posted in a prominent place at the project site.

*8-108A (3) Work Hours Act of 1962*

- Forty hours is the standard workweek. Any work over this limit must be compensated at no less than one and one-half times the basic hourly wage rate paid.
- The contractor is liable to employees for unpaid wages.
- The contractor is liable to the federal government for liquidated damages of \$10 per day per worker for each violation of the provisions of this act.
- In the event of violations of the provisions of this act, the state may withhold from the progress pay estimate sufficient money to guarantee unpaid wages and liquidated damages.
- Intentional violations are a federal misdemeanor (\$1,000 fine and/or six months' imprisonment.)

*8-108A (4) False Information Act*

- The making or use of false statements is a felony (\$10,000 fine and/or five years' imprisonment).
- The false statement poster shall be posted at one or more places where it is readily available to all personnel concerned with the project.

8-108B State Law

Following are some of the more frequently cited California Labor Code sections:

Sections 213, "Limitations Upon Effect and Applicability of Section 212," and 224, "Withholding or Diverting Portion of Wages Under Law or Written Authorization" (Employee authorization to withhold portions of the employees wages).

Section 1729, "Withholding Sums by Contractor From Subcontractor; Recovery of Penalty From Subcontractor" (Holds the subcontractor liable for failure to comply with the prevailing wage requirements).

Section 1771.5, "Labor Compliance Program" (Excludes construction work with a value of \$25,000 or less and alteration, demolition, repair, or maintenance projects with a value of \$15,000 or less from the prevailing wage requirements).

Section 1774, "Payment of Not Less Than Specified Prevailing Rates to Workmen" (Requires all workers be paid not less than the specified prevailing wage rate).

Section 1775, "Forfeiture For Paying Less Than Prevailing Rate; Rights of Workers" (Requires that penalties be assessed against the contractor for failure to pay employees prevailing wages).

Section 1776, “Payroll Record of Wages Paid; Inspection; Forms; Effect of Noncompliance; Penalties” (This section requires the contractor and subcontractor to keep accurate records of wages paid, specifies which persons and under what circumstances these records may be inspected, and provides penalties for failure to comply).

Section 1777.1, “Penalties For Willful Violations of Chapter; Notice; Hearing” (Allows the contractor to pursue a hearing process through the Department of Industrial Relations on a wage violation case).

Section 1777.5, “Employment of Apprentices on Public Works,” and 1777.6, “Prohibited Discrimination in Employment of Apprentices” (These sections pertain to apprenticeship standards and ratios, and nondiscrimination).

Section 1778, “Taking or Receiving Portion of Wages of Workmen or Working Subcontractor as Felony” (This section prohibits misuse of another person’s wages. This is the only section of the labor code that can result in a felony conviction).

Section 1779, “Charging Fee for Registration, Giving Information, or Placing or Assisting and Placing Person in Public Work as Misdemeanor” (This section prohibits a fee for employing a person in public works).

Section 1780, “Placing Order for Employment Where Fee or Valuable Consideration Involved as Misdemeanor” (This section prohibits a fee for placing an order for employment on public works).

Section 1810, “Hours Constituting Day’s Work; Stipulation in Contracts” (Eight hours constitutes a legal day’s work).

Section 1811, “Limitation as to Hours of Service; Exception” (Restricts work to eight hours per day and 40 hours per calendar week without overtime compensation).

Section 1812, “Record of Hours Worked; Availability for Inspection” (Requires contractor to keep accurate records of hours worked and have records available for inspection by the awarding body).

Section 1813, “Penalty When Workman Required to Work Excess Hours; Stipulation in Contract; Cognizance and Report of Violations” (Provides penalties for violations of provisions of Sections 1810-1815 by any contractor).

Section 1814, “Violation of Article or Noncompliance With Section Requiring Records of Hours Worked as Misdemeanor” (Provides that persons violating provisions of Sections 1810-1815 are guilty of a misdemeanor).

Section 1815, “Work Performed in Excess of Specified Hour Limitations; Compensation” (Provides overtime payment for hours of work in excess of eight hours per day or 40 hours per calendar week).

Section 2750.5, “Rebuttable Presumption That Contractor is Employee Rather Than Independent Contractor; Proof of Independent Contractor Status” (This section essentially says that a worker is presumed to be an employee unless proven to be an independent contractor).